IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13360 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SURAT MUNICIPAL, CORPORATION - Petitioner(s)

Versus

TAHERBHAI ABDUL TAYABBHAI VAZIR - Respondent(s)

==========

Appearance :

MR PRASHANT G DESAI for Petitioner No(s).: 1.

MR DA SURANI for Respondent No(s).: 1.

==========

CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 11/07/2005

ORAL JUDGMENT

1.0 The petitioner has challenged the order dated 01.09.2000 passed in Recovery Application No.329 of 1990 by

the Labour Court, Surat, whereby the said reference was allowed.

2.0 The brief facts of the case are that the respondent herein was an employee of the petitioner Corporation. The respondent came to be suspended from service vide order dated 29.05.1978 and vide order dated 30.08.1979 he was dismissed from the service. Feeling aggrieved by the said order, the respondent raised a dispute which came to be referred to the Labour Court, Surat, by way of a reference.

2.1 The Labour Court, by order dated 27.03.1989 directed the petitioner to reinstate the respondent in service with 100 per cent back wages. Against the said order, the petitioner Corporation preferred S.C.A. No.3989 of 1989 before this Court. By order dated 01.08.1989, this Court confirmed the order of the Labour Court qua reinstatement in service, but modified the order qua grant of back wages by awarding 50 per cent back wages.

2.2 Against the said order, the petitioner Corporation preferred Civil Appeal No.4838 of 1989 in Special Leave Petition (Civil) No.10797 of 1989 before the Hon'ble Supreme Court. The Hon'ble Supreme Court by order dated 28.11.1989

confirmed the order of this Court dated 01.08.1989. The said order reads as under;

> "Leave granted. Respondent appears in person. Learned Addl. Solicitor General says that the High Court has subsequently modified its order and confirmed the order of the Labour Court. After hearing both parties, we are of the opinion that in the facts and circumstances of the case and in the interests of justice the earlier order of the High Court dated 1st August, 1989 directing the payment to the respondent of 50% of the wages between September 1979 and August 1988 should be confirmed. We direct accordingly. The amount should be paid to the respondent within one month from today. The appeal is disposed of accordingly."

2.3 The respondent herein filed M.C.A. No.918 of 1989 in S.C.A. No.3989 of 1989 withdrawing the concession of 50 per cent back wages and for reviewing the order dated 01.08.1989. Thereafter, this Court vide order dated 12.10.1989 reviewed its earlier order and confirmed the order passed by the Labour Court. Pursuant to the order of the Hon'ble Supreme Court, the petitioner paid an amount of Rs.92,417.00 to the respondent towards retirement and other benefits and also an amount of Rs.98,540.00 towards 50 per cent back wages.

2.4 Thereafter, the respondent preferred Recovery Application No.329 of 1990 before the Labour Court, Surat. The Labour Court vide order dated 01.09.2000 directed the petitioner to pay an amount of Rs.98,540.00 to the respondent

along with 6 per cent interest towards remaining 50 per cent back wages. Hence, this petition.

3.0 I have heard learned counsel for the parties and perused the documents placed on record. By order dated 28.11.1989, the Hon'ble Supreme Court has confirmed the order of this Court dated 01.08.1989 passed in S.C.A. No.3989 of 1989, thereby directing the payment to the respondent of 50 per cent back wages between September 1979 and August 1988. However, the Labour Court, Surat, while exercising powers under Section 33-C(2) of the Industrial Disputes Act, 1947, has directed the petitioner Corporation to pay remaining 50 per cent of the back wages. Since the order dated 01.08.1989 passed by this Court has already been complied with, the impugned order of the Labour Court is required to be quashed and set aside.

4.0 In above view of the matter, this petition is allowed. The impugned order dated 01.09.2000 passed in Recovery Application No.329 of 1990 by the Labour Court, Surat, is quashed and set aside. Parties shall be governed by the order dated 28.11.1989 passed by the Hon'ble Supreme Court. Rule is made absolute accordingly with no order as to costs.

(K. S. JHAVERI, J.)

pravin/ *